IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

R.C.Rev..No. 24 of 2007(A)

RCA.72/2006 of RENT CONTROL APPELLATE AUTHORITY & II ADDL. DISTRICT COURT, KOZHIKODE
RCP.130/2004 of ADDL. MUNSIFF & RENT CONTROL COURT, KOZHIKODE-I

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REVISION PETITIONER/RESPONDENT

THOPPIL CHOYIKKUTTY,
S/O.THOPPIL CHEKKU, KOTTOOLI VILLAGE,
KOZHIKODE.

BY ADV. SRI.K.P.BALASUBRAMANYAN

RESPONDENTS: APPELLANT/PETITIONER

PUTHIYATHOPPIL HARIS,
S/O.KHADER, HASEENA HOUSE,
PANNIAMKARA, KOZHIKODE.

BY ADV. SRI.K.M.FIROZ

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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R.C.R. NO. 24 OF 2007

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Dated this the 1st day of February 2007

ORDER

Udayabhanu,J

The revision petitioner is the tenant who is conducting a tailoring shop in the disputed premises since 1965. The landlords, 3 in number who are brothers, purchased the property in 2003. The bonafide need set up is for starting a computer training and service centre by the petitioner/landlord, one of the co-owners who is well qualified in the field as he is working as a computer instructor in an institution called Panta Net in which he is also a partner. The Rent Control Court dismissed the application on the ground that the landlord failed to establish by adducing objective evidence, the fact that he is qualified to run the institution. The Rent Control Court as well as the appellate authority is concurrent as to the finding that the tenant is not entitled to the protection under proviso to section 11(3) of the Act. The appellate authority reversed the findings of the Rent

Control Court with respect to the bonafide need set up and rightly so. We find that as noted by appellate authority the lack of expertise alleged on the part of the petitioner/landlord was not really raised in the matter. Moreover, PW1, the petitioner has testified as to the fact that he is having the required qualifications and above all he is working as a lecturer in Panta Net, an out fit imparting computer training and that he is also a partner therein. The above fact was not disputed in the cross examination also. The stress on the part of the respondent/tenant before the trial court was that the premises is not suitable for running a computer training centre. The appellate authority has rightly rejected the above contention of the respondent/tenant. It was further held that even if it is conceded that the petitioner is not qualified in computer training etc., the owner need not be necessarily a computer expert. We find that as the evidence of PW1 in this regard stands not disputed as such the findings of the appellate authority in this regard is not to be interfered with.

2. The major contention raised before this court is that subsequent to the decision of the appellate authority the room in the upstair portion of the same building, owned by the landlord, got vacated. It is mentioned that the above room was occupied by 3 lawyers and the same was surrendered. The counsel for the landlord has disputed the above version. It is submitted that the room has not been vacated as such and the vacant possession surrendered, although the advocates concerned, have shifted. It is also submitted by him that one of the other co-owners is intending to start a business in the above upstair portion room. It has also been mentioned that the petition schedule premises one of a duplex nature situated in the ground floor as well as the 1st floor. Evidently the petition schedule premises is much more suitable for running computer training and service centre than the upstair room allegedly vacated. The case set up by the counsel for the landlord that another co-owner wanted to start a business in the room situated upstairs and occupied by the lawyers if vacated, also need not be doubted.

3. So far as the protection of the 2nd proviso to section 11 (3) of the Act is concerned, both the courts are concurrent in the findings that the tenant is not entitled to the same as it was found that other rooms are available in the area and also as the tenant has not made any efforts to find out a suitable premises in the locality. It has been admitted by him when examined RW1that 35 rooms in a building owned by the Kozhikode Corporation was scheduled for auction. But he did not participate in the same. Hence we find the findings of the appellate authority, so far as the section 11(3) of the Act is concerned, and the findings of both the courts below, so far as the protection of the second proviso to section 11(3) is concerned, are based on sound reasoning and is not liable to be interfered with. Hence the revision petition is dismissed at the threshold.

4. Counsel for the revision petitioner/tenant has sought for one year time to vacate the premises which was strongly opposed by the counsel for the landlord. In the circumstances, the revision petitioner/tenant is granted four months time from

today onwards to vacate the premises on condition that he shall remit the entire rental arrears, if any, and continue to remit the rent due in future and file an affidavit before the Execution Court within 20 days from today undertaking that he shall vacate the premises on or before **01.06.2007**.

The R.C.R is dismissed accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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